

EXHIBIT 5

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

UKRAINIAN FUTURE CREDIT UNION, -
a state chartered credit
union,

Plaintiff, Case No. 2015-0524-CZ

vs.

ADRII B. GARAK, et al,

Defendants.

PROCEEDINGS

BEFORE THE HONORABLE DIANE M. DRUZINSKI, CIRCUIT
JUDGE

Mount Clemens, Michigan - Monday, October 31, 2016

APPEARANCES:

For the Plaintiff: JAMES W. BIGELOW (P42331)
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For the Defendant: WILLIAM R. SEIKALY (P33165)
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23 REPORTED BY: ANGELA M. LITTLE, CSR-6444, RPR
24 Certified Court Reporter
25 (586) 469-5832

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WITNESSES: PLAINTIFF

None.

WITNESSES: DEFENDANT

None.

EXHIBITS

ADMITTED

None offered.

1 Mount Clemens, Michigan

2 Monday, October 31, 2016

3 At about 9:24 a.m.

4 - - -
5 (Court, Counsel and parties present.)

6 THE CLERK: Ukrainian Credit Union versus
7 Garak.

8 MR. BIGELOW: Good morning, your Honor. For
9 the record, James Bigelow, appearing on behalf of
10 the plaintiff.

11 THE COURT: Good morning.

12 MR. SEIKALY: William Seikaly appearing on
13 behalf of the defendant Shibanov, your Honor.

14 MR. RANDAZZO: Daniel Randazzo on behalf of
15 Mr. Holyk.

16 THE COURT: Good morning.

17 MR. RANDAZZO: Good morning, Judge.

18 THE COURT: I have the Credit Union's
19 motion, correct?

20 MR. BIGELOW: Yes, your Honor.

21 THE COURT: Okay.

22 MR. BIGELOW: Your Honor, there is one
23 brief administrative issue I wanted to bring to the
24 Court's attention. Two weeks ago when we were here
25 I obtained an order to redact the Social Security

1 numbers from the court file and there actually was a
2 second placement of the document containing those
3 numbers. It was at Ms. Shibarov's motion for
4 summary judgment. I did redact the Social Security
5 numbers from that document as well. That's
6 Exhibit 2 to her original motion for summary, Judge.

7 THE COURT: No objection?

8 MR. SEIKALY: Of course not, your Honor.

9 THE COURT: Okay.

10 MR. BIGELOW: Your Honor, as you're aware
11 at some point in this case Mr. Seikaly came into
12 possession of a document containing 37 Social
13 Security numbers of all the employees and board
14 members of the plaintiff.

15 THE COURT: Before we go down that road
16 again, you've got a motion to compel a deposition,
17 clarification of an order, and disqualification?

18 MR. BIGELOW: Yes, your Honor.

19 THE COURT: What are we dealing with first?

20 MR. BIGELOW: I would like to deal with the
21 disqualification issue first.

22 THE COURT: I've read everything in your
23 motion. Is there anything that you would like to
24 add?

25 MR. BIGELOW: Your Honor, as far as the

1 statutory issues involved here, there is the
2 Identity Theft Protection Act in the state of
3 Michigan, that's MCL 445.63. Also, the Computer
4 Fraud and Abuse Act, 18 U.S.C. 1030. At this date,
5 they both come into play in this case. At this
6 point, your Honor, Mr. Seikaly is refusing to tell
7 the Court what other documents he has that were
8 stolen from my client. We know he had some
9 documents that contained personal and confidential
10 information of the employees and he would like to
11 sit Mr. Jakymowych down to do depositions to
12 continue in this case presumably to use those stolen
13 documents. He needs to come forward today and tell
14 the Court how he obtained those documents. He needs
15 to return those documents to the plaintiff.

16 THE COURT: And that's relative to your
17 motion for what?

18 MR. BIGELOW: For disqualification.

19 THE COURT: Any response, Mr. Seikaly?

20 MR. SEIKALY: Briefly, your Honor. I'd
21 like the Court to know that in November of 1963 I
22 was in Detroit, not in Dallas. Your Honor, I
23 viewed this motion as frivolous, but I must take it
24 seriously. I retained counsel because in 30 years
25 of practicing law, I've never faced a motion like

1 this. I'm informed that when there's a potential
2 for conflict you have an obligation to inform your
3 client, which I've done. You have to evaluate any
4 potential conflict. The allegation of conflict here
5 is somehow my client and I are now both subject to
6 criminal prosecution. Your Honor, let's make it
7 real clear on the record I make the decisions about
8 what exhibits get put into a motion, not my client.
9 To the extent -- and I want to make this clear -- I
10 didn't do anything wrong. This was an error. We
11 all made it. We all should have caught it. None of
12 us did. But to the extent there is anyone
13 responsible, it's obviously me, not my client.
14 Therefore, I don't have a conflict and I got an
15 independent view of that.

16 Your Honor, I also informed my client of
17 her ability to seek different counsel. My client
18 was clear. I don't want to -- I don't want to waive
19 privilege, but I have a letter the Court could see
20 from my client on that.

21 Your Honor, I think I cited everything else
22 in the brief. In terms of Mr. Bigelow's allegation
23 that I have stolen something, or my client has
24 stolen something, you will note that the real
25 question is why weren't they produced and they know

1 where it came from. I'm not going to get into it.
2 If the Court wishes to examine me in-camera, I'll
3 raise my right hand and I'll tell the Court what's
4 going on here. But, this is simply an effort to
5 extort from my client. The Court's already ruled
6 that this case is hanging on by a sliver and they're
7 desperate. That's what's going on. Thank you, your
8 Honor.

9 MR. BIGELOW: May I respond, your Honor?

10 THE COURT: Briefly.

11 MR. BIGELOW: Just on two issues. There's
12 no affidavit from Mr. Seikaly's client in this case
13 supporting anything he just said. Also, as to the
14 fact that through discovery, Mr. Seikaly indicates
15 that these documents should have been produced in
16 discovery. He actually puts a quote in his brief
17 and indicates that, Well, here's what we asked for
18 and he references an exhibit. The exhibit is
19 actually a letter and not any discovery request
20 prepared or submitted to me. And certainly I would
21 have never given Mr. Seikaly these documents.
22 They're not relevant. They contain private
23 confidential information. He's not coming forward
24 today to tell anybody how he got these documents.
25 There clearly is an underlining larceny here.

1 There's a larceny by conversion since he have these
2 documents, is utilizing them in a case, and he won't
3 say where he got them.

4 THE COURT: In terms of your motion to
5 disqualify, it's respectfully denied. I am not
6 making any finding that there was direct or actually
7 I am making a finding that as far as I'm aware at
8 this point, there's no direct or indirect conflict
9 on the part of Mr. Seikaly involving what you allege
10 to be illegally obtained documents and then a
11 subsequent knowing and illegal production of those
12 documents which resulted in some sort of harm. This
13 Court is not going to do your work for you,
14 Mr. Bigelow. If you think there was a crime
15 committed, you have other avenues. Quit raising the
16 issue. I'm not going to address it again. Is that
17 clear? I'm not going to entertain any more motions
18 involving any of these issues in which you allege
19 these documents were stolen. Mr. Seikaly alleges
20 they should been produced so your motion to
21 disqualify Mr. Seikaly is respectfully denied.

22 MR. SEIKALY: Thank you, your Honor.

23 THE COURT: All right. Motion to compel.

24 MR. BIGELOW: Motion to compel the
25 deposition of Mrs. Shibarov, your Honor. She was

1 not produced. Can I ask the Court one question
2 regarding the documents?

3 THE COURT: No. We're moving on.

4 MR. BIGELOW: Okay. Your Honor, as to Mrs.
5 Shibanov, I gave Mr. Seikaly a two-week window
6 before I left for vacation quite some time ago; he
7 did not respond at all. I scheduled the deposition
8 as a video deposition. In light of the document
9 theft here and these other issues, I do think she
10 should be required to appear live so we can get into
11 that as well as all the other issues in the case,
12 and that's what I'm requesting in regards to Mrs.
13 Shibanov. I believe she should be produced first.
14 As to Mr. Jakymowych, Mr. Seikaly was given
15 unfettered opportunity to question Mr. Jakymowych
16 for two-and-a-half hours. He has indicated that the
17 deposition of Mr. Jakymowych is concluded both in
18 e-mails and in a pleading. I think his direct
19 examination should be deemed concluded and the
20 witness tendered to the plaintiff.

21 THE COURT: Mr. Seikaly?

22 MR. SEIKALY: Your Honor, the question
23 becomes how many times can we cover the same issue.
24 I did state that I was filing a motion upon the
25 completion of what the Court had ordered for Mr.

1 Jakymowych's deposition. In the deposition
2 transcript it says I still have questions. I asked
3 him if I could move forward. Despite the fact that
4 Mr. Jakymowych said, Yeah, let's get it done, Mr.
5 Bigelow stopped the deposition. So that's not
6 completed in my opinion.

7 Secondly, he is right. He sent me a
8 letter, an e-mail actually, saying here is some
9 times I want to take the deposition. I sent him an
10 e-mail back while he was on vacation saying, Look,
11 the judge has ruled, you don't have much of a case,
12 let's try to resolve this case and let's schedule
13 both depositions. I got an e-mail back that I
14 thought was a little snarky saying, I'm on vacation.
15 I've left you alone. Leave me alone. And, I did.
16 Your Honor, my client didn't show up. His client
17 didn't show up after I subpoenaed him. So, look,
18 I'm going to, I want to make this real clear, I'm
19 going to do whatever the Court says, and I'm not
20 going to bring a motion for clarification, I'm not
21 going to bring a motion to rehear, I'm not going to
22 do any of those things. But, respectfully, your
23 Honor, you have the patience of Job; you certainly
24 have more than I do. And at some point, you've got
25 to tell people who act this way that it's got to

1 stop. I cancelled both deps. But, whatever the
2 Court orders, I'm going to follow. Thank you.

3 THE COURT: Mr. Bigelow?

4 MR. BIGELOW: Your Honor, as to the
5 subpoena, that was just another act of unethical
6 conduct by Mr. Seikaly. He didn't subpoena me. He
7 didn't send the notice to me. He didn't send the
8 letter to me alone. He actually had Mr. Jakymowych
9 served, a clear violation of the ethical rule,
10 Michigan Rule of Professional Conduct 4.2. This
11 conduct is just going to continue. He's in
12 possession of stolen documents. This is what's
13 going to continue to --

14 THE COURT: Mr. Bigelow, I've told you I'm
15 not going to be the public forum for your
16 allegations regarding the documents, the
17 disqualification, the unethical behavior. I have
18 had it up to my eyeballs with that. I've had up to
19 my eyeballs that it is contained in every single
20 brief and in every single motion and it takes me an
21 hour and a half to figure out what it is that you
22 want from your continual motions, other than to just
23 continually place in the public what you believe Mr.
24 Seikaly is responsible or guilty of, and I'm not
25 going to hear it anymore.

1 It was a blatant misrepresentation that you
2 did not hear from Mr. Seikaly at all regarding your
3 request for deposition dates for his client. I read
4 those e-mails. It's also a blatant misrepresentation
5 in one of the depositions when Mr. Seikaly indicated
6 he had these documents and you said he's bragging
7 about them. He just acknowledged that he had them
8 and you were questioning about it. I don't know
9 what you're reading that I'm reading differently
10 that I don't see nor hear the same things that you
11 continually reiterate in brief and in open court.

12 In terms of the motion to compel, first of
13 all, we're going to finish Mr. Jakymowych's
14 deposition. All right. Mr. Seikaly, you have
15 another hour and one-half with him.

16 In terms of your the client, she's to be
17 produced. We were going to do video depositions and
18 that's still going to remain the same.

19 MR. SEIKALY: Your Honor, video conferences?

20 THE COURT: Video conference. She's out of
21 state somewhere --

22 MR. SEIKALY: She is, your Honor.

23 MR. BIGELOW: And how long will I have with
24 Mr. Jakymowych?

25 THE COURT: He's your client, right, or

1 your representative? Or, I mean, I don't know what
2 you want to do with him. What do you mean how long
3 do you have with him?

4 MR. BIGELOW: I mean, well, he does have
5 health concerns as you recall. You limited the
6 deposition.

7 THE COURT: Well, I did. Well, first of
8 all, your behavior which is borderline obstructive,
9 you didn't want to produce him. You filed a motion
10 for protective order, provided me his medical
11 records. I reviewed it and I said his deposition
12 could go on in increments. He was apparently fine
13 to continue, but you didn't want to do. So now you
14 want to continue so that you can cross-examine your
15 client?

16 MR. BIGELOW: Yes.

17 THE COURT: Your representative? He's okay
18 to do that?

19 MR. BIGELOW: My client's employee.

20 THE COURT: Your client's employee. So
21 he's okay to participate in that; is that correct?

22 MR. BIGELOW: I mean, I think it should be
23 incrementally done, sure.

24 THE COURT: Any response, Mr. Seikaly?

25 MR. SEIKALY: Your Honor, here is my only

1 problem: I get an hour and a half. If he takes an
2 hour and a half, I have more questions. And when
3 the Court requires us to come back for this, Mr.
4 Randazzo's here, he saw, he saw Mr. Jakymowych.
5 This gentlemen didn't have any trouble with this
6 deposition. Again, I can't really challenge the
7 Court's ruling on this. You saw the medical
8 records.

9 THE COURT: I saw the medical records,
10 yeah.

11 MR. SEIKALY: But he says he works seven
12 hours a day.

13 MR. BIGELOW: That's false pride, your
14 Honor. That's just his pride.

15 THE COURT: Mr. Bigelow, I'm not going to
16 entertain anymore motions regarding the depositions
17 or the records again. Okay. Mr. Jakymowych is
18 going to be produced. You have another hour and
19 15 minutes with him Mr. Seikaly.

20 MR. SEIKALY: You just said an hour and a
21 half. Which is --

22 THE COURT: Did I say hour and a half? I
23 can't remember what I originally ruled.

24 MR. SEIKALY: Well, the original one was an
25 hour and 15. You just said an hour and a half. I

1 just want to know which one?

2 THE COURT: Hour and 15 minutes is fine.
3 We'll stay consistent.

4 MR. BIGELOW: Thank you, your Honor.

5 THE COURT: And, Mr. Bigelow you can have
6 an hour and 15 minutes and then if Mr. Seikaly wants
7 to follow-up what you addressed in cross, he can.
8 And if Mr. Jakymowych is able to stay all day, then
9 we'll finish it in one day. When he's done, then
10 we'll do Mr. Seikaly's client by video conferencing.

11 MR. SEIKALY: Thank you, your Honor.

12 MR. BIGELOW: Thank you, your Honor.

13 MR. SEIKALY: Your Honor, we're going to run
14 into trouble with the trial date.

15 THE COURT: No, we're not. Trial is going
16 on November 29th for the one sole remaining issue.

17 MR. SEIKALY: Well, your Honor, I assume
18 that the Court will rule on that when we submit
19 these supplemental depositions before the 29th.

20 THE COURT: Yes. In fact, I would like
21 Jakymowych's and your client's deposition done this
22 week.

23 MR. BIGELOW: We'll try, your Honor.

24 THE COURT: If you can fit them in.

25 MR. SEIKALY: I'll do my best.

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MR. BIGELOW: Thank you, your Honor.

MR. SEIKALY: Thank you, your Honor.

MR. RANDAZZO: Thank you, your Honor.

THE COURT: Do a yellow order, please.

MR. BIGELOW: Of course.

MR. SEIKALY: Thank you, your Honor.

(At 9:39 a.m., proceedings concluded)

* * *

1 STATE OF MICHIGAN)
2) SS
3 COUNTY OF MACOMB)
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6 CERTIFICATE OF COURT REPORTER
7

8 I, Angela M. Little, Certified Court
9 Reporter, of the Sixteenth Judicial Circuit, in the
10 State of Michigan, do hereby certify that the
11 foregoing pages, 1 through 18, inclusive, comprise a
12 full, true, and correct transcript of the
13 proceedings had in the matter of UKRAINIAN FUTURE
14 CREDIT UNION, a state chartered credit union,,
15 Plaintiff, versus ADRII B. GARAK, et al, Defendant,
16 Case No. 2015-0524-CZ, on Monday, 31st of
17 October, 2016.
18

19 /s/ Angela M. Little
20 ANGELA M. LITTLE - CSR-6444, RPR

21 DATED: 11/1/16
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2) SS
3 COUNTY OF MACOMB)
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ANGELA M. LITTLE - CSR-6444, RPR

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